IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5112 of 1998
TO
FIRST APPEAL No 5116 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT
Versus
HEIRS OF DECD.PATEL ISHWARBHAISHANKARBHAI

Appearance:
In all First Appeals :
MR MA PATEL for Petitioner No. 1-2
MR NS DESAI for Respondent No. 1,1/5,2-3/1,4
RULE SERVED for Respondent No. 1/1-1/4,1/5/1-1/6,3/1-3/8

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. In this group of five appeals u/S. 54 of the Land p been arisen, therefore, upon request they are being disposed of by this common judgment.

2. The challenge in this group of five appeals is against the common judgment of Mehsana District delivered by the Assistant Judge in Land Acquisition Reference Nos. 524, 525, 1189, 1192 and 1193 of 1988 (Main L.A.R. No.524 of 1988) on 27/11/1997 at the instance of the State of Gujarat and Project Manager, O.N.G.C. Project, Mehsana in all the appeals.

3. Pursuant to a notification u/S. 4 (1) of the Act dated 5/1/1984 followed by notification u/S. 6(1) of the Act dated 13/9/1984 and after observing necessary procedure the Special Land Acquisition Officer, O.N.G.C. Mehsana by his common award granted Rs.11/- per sq. mtr. as a market value for the lands having road frontage acquired for the purpose of O.N.G.C. and fixed Rs.10/per sq. mtr. for other lands and also other statutory benefits, which was not acceptable to the respondents herein - original claimants - owners of the lands. Therefore, at their instance, a reference u/S. 18 came to be made to the District Court and the District Court by its common judgment directed to pay compensation at the rate of Rs.40/- per sq. mtr. for the acquired lands and other statutory benefits, which is under challenge at the instance of the State of Gujarat and the acquiring authority invoking the aids of section 54 of the Act.

4. After having heard the learned advocates appearing for the parties and after having dispassionately considered the factual profile and legal settings and the finality of the award Exh. 36 by the Hon'ble Supreme Court, we are of the clear opinion that this group of appeals are meritless and required to be dismissed.

5. In order to strengthen our conclusion we would only highlight necessary and material facts emerging from the present group of appeals and the finality of the award which is comparable produced at Exh. 36, which has made a litigating voyage till the final Court. In this group of appeals the date of notification u/S. 4 (1) is 5/1/1984, whereas, the date of notification in case of comparable award, at Exh.36 was 27/5/1982. Award in respect of the lands acquired manifested, in Exh.36, is in the same village and just adjoining on the northern side of the acquired land in this group of appeals. From the copy of the judgment produced before us of the

Hon'ble Supreme Court dated September 27, 2000, in relation to the award Exh.36, it is very clear that the compensation for agricultural lands came to be fixed at the rate of Rs.38/- per sq. mtr. and in case of non-agricultural lands the award of Rs.50/- per sq. mtr. came to be confirmed by the Hon'ble Supreme Court. There is no dispute about the fact that the lands involved in this group of appeals are agricultural lands. They were acquired under the award produced at Exh.36 before the Reference Court and it is the award of the same Reference Court in respect of the land as stated hereinabove adjoining to the land covered in this group of appeals. The final fixity of the market value at the rate of Rs.38/- per sq. mtr. in view of the award Exh.36, which is relevant and comparable to the facts of the present case, was 2 years prior to the date of notification in the present case and, therefore, as per the settled proposition of law 20% rise i.e. 10% per annum is required to be considered and if that well pronounced, celebrated legal proposition is applied to the facts of the present case, which would tantamount to the conclusion that the amount of Rs.40/- per sq. mtr. awarded by the Reference Court is just and reasonable requiring no interference in this group of five appeals. Therefore, in our opinion, in so far as merits of five appeals are concerned, they are required to be dismissed. In view of the aforesaid facts and circumstances, it be noted that it is also a settled proposition of law that when the appellate Court broadly agreed with the views and conclusions recorded by the Court below, it would not be necessary to reiterate and repeat all the grounds and views.

6. However, before parting, we would like to highlight one aspect which was raised by learned advocate for the claimants Mr. Desai. He pointed out that the direction of the deduction of 5% out of the amount of compensation as the share of the Government in the impugned common judgment is unsustainable. In support of his contention, he has placed reliance on a decision of this Court rendered in the case of Samjuba Merambhai v. 2nd Spl. Land Acquisition Officer, Ahmedabad, reported in AIR 1998 Gujarat 112, in which it has been held relying upon the decision of the Hon'ble Supreme Court rendered in the case of State of Maharashtra v. Babu Govind Gavate, reported in AIR 1996 SC 904 that a case for compulsory acquisition, the deduction of 5% share of the Government from the compensation awardable to the owners of the lands whose lands have been acquired, is not just and reasonable and not competent. Obviously, since no cross objections are filed and no counter

appeals are filed by the claimants, the question would arise as to whether in the appeals at the instance of the State of Gujarat the deduction order in the impugned common judgment could be directed to be quashed and set aside or not ? In this connection, we would like to refer the provisions of Order 41 Rule 33 of the Civil Procedure Code, 1908 (CPC), which reads as under :-

"33. Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees."

7. It is very clear from the aforesaid provision that in a contingency like this, the Court should not raise its hands in helplessness in doing effective and efficacious justice between the parties in absence of cross objections or counter appeals. The underlying design and purpose of the provision of section 41 rule 33 has been manifestly expounded and enunciated in host of the judicial pronouncements. However, we would like to refer the decision rendered in the case of M/s. Bihar Supply Syndicate v. Asiatic Navigation reported in AIR 1993 SC 2054. It is, therefore, very clear that the appellate Court, while dealing with such a contingency or a situation can resort to the provision of Order 41 Rule 33, which has the underlying design for effective justice between the parties. In para. 29 weighty observations are made and important principles referable to the provisions of Order 41 Rule 33 have been dealt with, interpreted and enunciated. Relying on the said proposition of law and the spirit of the provision of Order 41 Rule 33 of the CPC and also in addition to that a Government circular dated 19/3/2001, the direction with regard to the deduction of 5% share of the Government from the compensation in the impugned common judgment is required to be quashed and set aside.

8. Consequently, the direction made in the impugned common judgment about deduction of 5% of share of the Government from the amount of compensation awarded to the claimants - the owners of the lands covered under the acquisition is, hereby, quashed and set aside. Obviously appeals are found to be meritless and, therefore, they shall stand dismissed. In the facts and circumstances, parties are left to bear their own costs.

The copy of the Government circular referred to hereinabove is taken and placed on record in this group of five appeals.

[J.N. Bhatt, J.]

[Akshay H. Mehta, J.]

* Pansala.